

RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) was convened in public session on March 11, 2014 at 9:00 a.m., at 44 West Bridge Street, Oswego, New York.

The meeting was called to order by the Vice Chair and, upon the roll being duly called, the following members were:

PRESENT: Nick Canale, Jr., H. Leonard Schick, Morris Sorbello and Gary T. Toth

ABSENT: Donald H. Kunzwiler, and Carolyn A. Rush

ALSO PRESENT: Kevin C. Caraccioli, David S. Dano and L. Michael Treadwell

The following resolution was duly offered and seconded:

RESOLUTION APPROVING THE AGENCY’S PARTICIPATION IN A MORTGAGE AND SECURITY AGREEMENT, A REGULATORY AGREEMENT AND A SUBORDINATION AGREEMENT AT THE REQUEST OF THE COMPANY IN CONNECTION WITH PERMANENT FINANCING ON THE PROJECT FACILITY AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

WHEREAS, the County of Oswego Industrial Development Agency (the “*Agency*”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, the “*Act*”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant financial assistance in connection with one or more “projects” (as defined in the Act); and

WHEREAS, by resolutions adopted on January 21, 2010 and March 14, 2012 (the "**Resolutions**"), the Agency agreed to undertake a certain project (the "**Project**") at the request of Seaway Lofts Associates, LLC (the "**Company**") consisting of: (A) (i) the acquisition of a leasehold interest in approximately .6749 acres of land located at 472 West First Street in the City of Oswego, New York, Oswego County (the "**Land**"); (ii) the demolition of the one story addition and three bay garage; the renovation and rehabilitation of an approximate 29,400 square foot building for use as an affordable housing project, including, but not limited to the remediation/abatement of asbestos and lead paint, the replacement/repair of windows, roof and driveway, the creation of (26) one and two bedroom apartments ranging from 600-950 square feet, the creation of an on-site community room, rental office, common laundry facility, tenant storage, computer lab room, and on-site parking for approximately 33 cars (collectively the "**Facility**"), all located on the Land; (iii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings, including an HVAC system, elevator, play structure and fencing around south, north and west perimeters (the "**Equipment**") (the Land, Facility and Equipment are hereinafter collectively referred to as the "**Project Facility**"); (B) the granting of certain financial assistance in the forms of exemption from real property tax, mortgage recording tax, sales and use taxation, as well as a loan from the Agency's Economic Development Fund in a principal amount not to exceed \$300,000 (collectively, the "**Financial Assistance**"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the lease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the City of Oswego acted as lead agency for the purpose of conducting a coordinated environmental review of the Project under SEQRA, 6 NYCRR Part 617, and determined that the Project constitutes a "Type 1 Action" under SEQRA, will not result in any significant adverse environmental impacts and issued a negative declaration for the Project dated January 12, 2010; and

WHEREAS, in conjunction with the undertaking of the Project, the Company and the Agency entered into two (2) mortgages securing certain financing including construction financing in favor of KeyBank National Association in the principal amount of \$2,159,933 (the "**KeyBank Mortgage**") and the second in favor of Bentham Foundation, Inc. in the principal amount of \$227,642 (the "**Bentham Mortgage**" and together with the KeyBank Mortgage, the "**Original Mortgages**") to secure the Company's obligations under corresponding notes in like amounts. The Agency also entered into a subordination agreement wherein the Agency subordinated certain mortgages it held to the Original Mortgages; and

WHEREAS, the Agency was also a party to a certain regulatory agreement dated May 10, 2012 by and between Seaway Lofts Associates, LLC, County of Oswego Industrial Development Agency and New York State Division of Housing and Community Renewal with respect to the Project Facility; and

WHEREAS, the Company has requested that the Agency participate in certain permanent financing by executing a Mortgage and Security Agreement (the "**Mortgage**") in favor of Housing Trust Fund Corporation, in an amount not to exceed One Million Three Hundred Fifty-Five Thousand Two Hundred Dollars (\$1,355,200) to pay off the Keybank Mortgage and secure the permanent financing of the Project. In addition to the Mortgage, the

Company has requested the Agency participate in a subordination agreement and a regulatory agreement; and execute a corresponding exemption from mortgage recording tax affidavit; and

WHEREAS, the Agency Lease Agreement dated as of May 10, 2012, executed by the Company and the Agency in connection with the Project, anticipated the Agency's participation in additional financings.

NOW, THEREFORE, be it resolved by the members of the County of Oswego Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) The approval, execution and delivery of the Mortgage, the Regulatory Agreement, the Subordination Agreement and the mortgage recording tax exemption affidavit will not result in a change to the Project as originally considered such that an amendment of the Negative Declaration is required, and as such, the Negative Declaration is hereby ratified and affirmed and no further SEQRA action is required; and

(b) The Agency has the authority to, and hereby does, approve and authorize the Mortgage, the regulatory agreement, the subordination agreement, the mortgage recording tax exemption affidavit and the other documents and agreements identified in, or required to carry out the intent of, this Resolution, and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein, subject to review and approval of the Chief Executive Officer or Vice Chairman upon advice of counsel and/or special counsel to the Agency (collectively, the "*Mortgage Documents*") and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution. The execution thereof by the Chief Executive Officer or Vice Chairman constitutes conclusive evidence of such approval.

(c) No additional Financial Assistance is being provided to the Project beyond that which has already been provided.

(2) As a condition precedent to the Agency's participation in the Mortgage Documents and the grant of the New Financial Assistance, as set forth herein, the Company will submit to the Agency any and all information required by the Agency in connection with its reporting requirements under the Act as well as the appropriate fee, including the Agency's legal fees associated with the refinancing, in exchange for the Agency's participation, execution and delivery of the Mortgage Documents.

(3) Should the Agency's participation in the Mortgage Documents on the Project Facility be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is

not authorized under the Act to participate in the refinance, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

(4) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(5) The Chief Executive Officer of the Agency is hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(6) This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(7) Counsel to the Agency and special Agency counsel are hereby authorized to work with the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of the New Financial Assistance and to consummate the transactions contemplated by this Resolution including but not limited to the Mortgage Modification.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>	<u>Recuse</u>
Nick Canale, Jr.	X				
Donald H. Kunzwiler				X	
Carolyn A. Rush				X	
H. Leonard Schick	X				
Morris Sorbello	X				
Gary T. Toth	X				

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF OSWEGO)

I, the undersigned Chief Executive Officer of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) held on March 11, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I Further Certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Agency on March 11, 2014.

L. Michael Treadwell
Chief Executive Officer

(SEAL)